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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,598	11/14/2003	Carol Rudolph	4000335-148192	2011

7590 07/21/2004

Attn: Intellectual Property Department
Porter, Wright, Morris & Arthur LLP
28th Floor
41 South High Street
Columbus, OH 43215-6194

EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,598

Applicant(s)

RUDOLPH, CAROL

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/14/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 3 and 8 – 11 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,887,546 to Gruel (as cited by Applicant).
3. Gruel discloses the invention as claimed. Gruel discloses (claim 1) a one-piece litter box comprising, in combination: a container **14** having a base wall **16** with sidewalls **18 – 24** extending vertically upward from edges of the base wall **16** to form a hollow interior space; wherein a top opening **26** is formed by upper edges of the sidewalls **18 – 24**; wherein an entrance opening **28** is formed in one of the sidewalls **18**, wherein the entrance opening **28** is free of coverings; and wherein the sidewalls **18 – 24** form a height of the container which substantially prevents the animal from seeing over the sidewalls while standing within the hollow interior space so that the animal faces the entrance opening while within the hollow interior space; (claim 2) wherein each of the sidewalls **18 – 24** are continuous except for the entrance opening **28**; (claims 3 and 8) wherein the height of the container is at least 15 inches, set forth at col. 2, line 52 (2:52), “from about 20 cm to about 40 cm high,” which $\approx 7.9 - 15.8$ inches); (claim 9) wherein the entrance opening is spaced above a bottom of the container a distance equal to at least 40% of the height of the container, set forth at 2:61, “the opening...begins at a point from about 10 cm [3.94 in.] to about 15 cm [5.91 in.] above the bottom wall **16**,” which would mean

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spaced above the bottom anywhere from about 25% (3.94/15.8) to about 75% (5.91/7.9) of the height of the container; (claim 10) wherein the top opening **26** is entirely open and free of any covering; and (claim 11) wherein the container is molded of an opaque plastic material, 2:50.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 – 7 and 15 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruel in view of US Patent No. 5,590,623 to Toole et al.

6. Re – claim 4, Gruel discloses the invention substantially as claimed as applied above, including the entrance opening **28** being spaced 15 cm (5.91 inches) above the bottom **16** of the container **14**, except for the entrance opening being spaced at least 6 inches above a bottom of the container. Toole et al. teach, at 2:42, “It has been determined that if the cat can stand on its back legs with its forepaws on the top edge of the box, so that it can inspect the interior of the box before entry, that the cat will enter once it is satisfied that the box is acceptable to it. The necessity of jumping over the wall of the box is no impediment to cats. Even elderly cats of 20 plus years readily use the litter box of the invention,” which is disclosed as being 14.5 inches tall, at 2:58, in the same field of endeavor for the purpose of preventing the escape of litter or excreta from the box during use by a cat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gruel to include the entrance opening being

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spaced at least 6 inches from a bottom of the container as taught by Toole et al. in order to prevent escape of litter and excreta during use by a cat.

7. Re – claims 5 – 7 and 15 – 18, Gruel in view of Toole et al. discloses the claimed invention. Gruel further discloses the entrance opening **28** having an area of from about 19.7 in^2 (the least possible area the opening can have, which would be 20 cm high walls less 15 cm above the bottom for the beginning of the opening (5 cm, so far) multiplied by 10 cm wide for the opening = 50 cm^2) to about 177 in^2 (the most possible area the opening can have, which would be the same as before only using 40 cm high less 10 cm above the bottom (30 cm) times 15 cm wide = 450 cm^2) greater than that which a 6 to 8 inch diameter opening would give – roughly 50 – 79 in^2 except for the entrance opening being circular. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the opening circular, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent, and as evidenced by the included references, US Patent Nos. 6,135,057 to Cummings and Des. 230,285 to Dilley demonstrating an opening for a cat being circular. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

8. Re – claim 19, Gruel discloses the container being molded of an opaque plastic material at 2:50.

9. Claims 12 and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Gruel in view of US Patent No. 6,196,156 B1 to Denesuk et al.

10. Gruel (and Gruel in view of Toole et al.) discloses the invention substantially as claimed as applied above. However, Gruel (and Gruel in view of Toole et al.) does not disclose wherein the container is molded of a plastic material including an antimicrobial material. Denesuk et al.

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teach an article 114 molded of a plastic material including an antimicrobial material, 4:40 – 5:55 in the same field of endeavor for the purpose of inhibiting microbes in domestic animal bedding. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gruel to include the container being molded of a plastic material including an antimicrobial material as taught by Denesuk et al. in order to inhibit microbes.

11. Claims 13 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Gruel in view of US Patent No. Des. 380,880 to Reid.

12. Re – claim 13, Gruel discloses the invention substantially as claimed as applied above. However, Gruel does not disclose wherein the upper edges of the sidewalls form a lip having a round upward-facing surface. Reid teaches upper edges of sidewalls forming a lip having a round upward-facing surface in the same field of endeavor for the purpose of handling the litter box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gruel to include the upper edges of sidewalls forming a lip having a round upward-facing surface as taught by Reid in order to handle the litter box.

13. Re – claim 14, Gruel discloses the invention substantially as claimed as applied above. However, Gruel does not disclose wherein the upper edges of the sidewalls form a lip having a width of no more than one-half inch. Reid teaches the upper edges of the sidewalls forming a lip having a width of substantially no more than one-half inch in the same field of endeavor for the purpose of strengthening the structure of the litter box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gruel to include the upper edges of sidewalls forming a lip having a width of no more than one-half inch as taught by Reid in order to strengthen the structure of the litter box.


Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached at (703) 306 – 4198. The fax number is (703) 872 – 9306.

bh

7/15/04



MICHAEL J. CARONE
SUPERVISORY / ATENT EXAMINER